NO. 82-1628

In the Supreme Court of the United States

October Term, 1982

In the Matter of the Liquidation of
ALL-STAR INSURANCE CORPORATION,
a Wisconsin Corporation

RODERICK B. McNAMEE,
Special Deputy Commissioner of
Insurance of the State of Wisconsin
for the Liquidation of All-Star
Insurance Corporation,

Appellee,

vs.

APS INSURANCE AGENCY, INC.

Appellant.

On Appeal From The
Supreme Court of Wisconsin

MOTION TO DISMISS

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TABLE OF CONTENTS

Page

Motion to Dismiss 1

Argument 2

Conclusion 5

TABLE OF AUTHORITIES

Cases:

All-Star Insurance Corp. and Roderick B. McNamee vs. *Lee M. Scarborough & Company*, No. 82-1588 2

Continental Illinois National Bank & Trust Co. v. *Chicago, R. I. & P. Ry. Co.*, 294 U.S. 648 (1935) 3

McGee v. *International Life Insurance Co.*, 355 U.S. 220 (1957) 2,3

Northern Pipeline Construction Co. v. *Marathon Pipe Line Co.*, ____U.S.____, 102 S.Ct. 2858 (1982) 3

Pennington v. *Toyomenka, Inc.*, 512 F.2d 1291 (5th Cir. 1975) 3

Robertson v. *Railway Labor Board*, 268 U.S. 619 (1925) 3

Schaffer v. *Heitner*, 433 U.S. 186 (1977) 4

Treinies v. *Sunshine Mining Co.*, 309 U.S. 66 (1939) .. 3

Statutes and Rules:

28 U.S.C. §1471 3

28 U.S.C. §2361 3

Wis. Stats. §645.04(5)(a) 2

Bankruptcy Rule 704 3

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Pursuant to Rule 16, Supreme Court Rules, Appellees All-Star Insurance Corp., in Liquidation, and Roderick B. McNamee, Special Deputy Commissioner of Insurance for the State of Wisconsin, respectfully move for an Order dismissing the appeal on the ground that it does not present a substantial federal question.

ARGUMENT

The Court's attention is respectfully directed to the argument submitted in Appellees's Motion to Affirm in *All-Star Insurance Corp. and Roderick B. McNamee* v. *Lee M. Scarborough & Company*, No. 82-1588. Appellee submits the following argument in response to those additional matters set forth in the Jurisdictional Statement of Appellant APS Insurance Agency, Inc.

First, Appellant suggests because only four states besides Wisconsin have adopted special, sweeping jurisdictional provisions, that the state's interest in disregarding customary due process limits is not a compelling one. However, Wisconsin has not disregarded customary due process limits. This is not a case involving a dispute between private parties. In making its argument, appellant failed to analyze the personal jurisdiction statutes of each state having statutes providing for the liquidation of insurers. States adopting the Uniform Insurers Liquidation Act may have applicable broad personal jurisdiction statutes which could be used in liquidation cases. Thus, the absence of specific jurisdictional statutes fails to show that these states would not assert jurisdiction in liquidations upon defendants having "minimum contacts" as described in *McGee* v. *International Life Insurance Co.*, 355 U.S. 220 (1957).

In this case, Wisconsin has determined that the minimum contacts of doing substantial business by mail and the telephone was sufficient to impose jurisdiction in this case. The fact that state long-arm statutes may differ does not mean that Wis. Stats. §645.04(5)(a) violates due process. Due process does not have the purpose of enforcing uniformity of result in matters of public policy. That

certain states may choose to require some form of physical presence to assert jurisdiction over the person would not support the conclusion that Wisconsin courts cannot assert personal jurisdiction in this case based upon the defendant's mail and telephone contacts with a Wisconsin insurer. *McGee* v. *International Life Insurance Co.*, 355 U.S. 220 (1957).

Second, Appellant argues that the situation is analogous to that of a bankruptcy trustee whose bankrupt has claims or potential claims against out-of-state parties. Again, Appellant's argument misses the mark. *Pennington* v. *Toyomenka, Inc.*, 512 F.2d 1291 (5th Cir. 1975) did nothing more than analyze the applicability of Georgia's long-arm statute to a certain set of facts. Having determined that the bankruptcy trustee did not meet the standards of the Georgia statute, the Court found it unnecessary to discuss any constitutional issues whatsoever.

The power of Congress to legislate in bankruptcy matters and the jurisdiction of federal courts in bankruptcy cases was not involved in *Pennington* v. *Toyomenka, Inc.*, *supra*, nor is it involved in this case. Congress has provided for nationwide service of process in appropriate cases. *See* 28 U.S.C. §2361; 28 U.S.C. §1471; Bankruptcy Rule 704. The constitutionality of these service of process statutes and rules cannot be seriously questioned. See *Robertson* v. *Railway Labor Board*, 268 U.S. 619, 622 (1925); *Continental Illinois National Bank & Trust Co.* v. *Chicago, R. I. & P. Ry. Co.*, 294 U.S. 648, 682-83 (1935); *Treinies* v. *Sunshine Mining Co.*, 309 U.S. 66, 70 (1939); *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co.*, ____U.S.____, 102 S.Ct. 2858, 2863 n.4 (1982). Thus, if Appellants correctly argue that the functions of federal courts in bankruptcy matters and state courts in in-

surance liquidations are indeed analogous, jurisdiction should be upheld in this case.

Finally, Appellees would explain why they have moved to dismiss this appeal, rather than move for affirmance. In this case, Appellees seek to collect approximately $18,000 from Appellant for premiums which Appellant retained after collecting them from insureds whose risks had placed with All-Star, and for certain unearned commissions. The Wisconsin Supreme Court remanded this case to the Wisconsin Court of Appeals. On March 14, 1983, the Wisconsin Court of Appeals reversed the decision of the Circuit Court and further proceedings in the trial court are now required. Although Appellees believe that the decision of the state courts on the federal issue is "final," *Shaffer* v. *Heitner*, 433 U.S. 186, 195 n.12 (1977), because of the present posture of this case, Appellees do not believe that it merits plenary review by this Court.

CONCLUSION

The decision of the Wisconsin Supreme Court was clearly correct. This appeal should be dismissed for want of a substantial federal question.

Dated: May 4, 1983.

Respectfully submitted,

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